



County of Los Angeles

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DAVID E. JANSSEN
Chief Administrative Officer

November 13, 2003

To: Supervisor Yvonne Brathwaite Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

Board of Supervisors
GLORIA MOLINA
First District

YVONNE BRATHWAITE BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

STATE LEGISLATIVE UPDATE

The California State Association of Counties and the California League of Cities have collaborated on the drafting of a proposed constitutional amendment – **“The Local Taxpayers and Public Safety Protection Act”** – to protect local revenues from State budget action. Similar efforts in past years have been considered but they have not been pursued for various reasons. However, the election of a Governor committed to rolling back the recent increase in vehicle license fees (VLF), and proposals to eliminate the VLF entirely have reawakened interest in a constitutional amendment that would make it harder for State policy makers to take such actions. A copy of the latest draft is attached.

The Proposed Amendment

The proposed constitutional amendment seeks to protect local government – counties, cities and special districts from any action by the State that “removes local tax dollars from the control of Local Government...” The proposal focuses on two potential threats, the take-away of local revenues and State-imposed mandates that require increased expenditures by local governments. The amendment seeks to minimize those threats by creating procedural requirements that would make it more difficult (but not impossible) for the State to reduce or redirect local tax revenues.

Local Revenue Protection

The proposal specifically identifies the local revenue sources subject to its provisions as local property taxes, vehicle license fee collections and backfill, the VLF “gap” loan payback, the reversal of the sales tax for property tax swap that were part of this year’s

State budget solution, and the local sales tax. Generally speaking, the amendment seeks to protect these revenue sources by requiring that any State action that would adversely affect them – by reducing, suspending, delaying, or reallocating them, for example – could only be done if approved by a two-thirds vote of each house of the Legislature and affirmed by a majority of the electorate at the next general election.

With respect to the VLF, the proposal would de-link the tax from the backfill by obligating the State to provide full funding (collections plus backfill) to local governments at their FY 2002-03 level, adjusted annually for the change in vehicle valuations (or population and inflation if the VLF is abolished), unless two-thirds of the Legislature and a majority of the electorate decide otherwise. In other words, even if the VLF were repealed, local governments would continue to receive revenue as if the VLF continued at the 2% level, unless two-thirds of the Legislature and a majority of the voters voted to eliminate the State backfill as well as the tax.

State Mandate Protection

The proposal attempts to protect local governments from the State's failure to reimburse local governments for the cost of providing State or Federal mandated services. Because of the State's deferral of reimbursement payments, local governments have had to absorb over \$1 billion in costs over the last two years with no indication of when, if ever, they will be repaid.

The proposal seeks to address this problem in a number of ways. It tightens the definition of a "State mandate" to include when the State "creates a new program, requires services not previously required to be provided, increases the frequency or duration of required services, increases the number of persons eligible for services, or transfers to local government complete or partial financial responsibility for a program for which the State previously had complete or partial financial responsibility." This definition is intended to cover any increase in local cost sharing ratios which the Sonoma decision ruled was not a mandate.

In addition, the proposal would require the State to pay a subvention for a new State mandate within 180 days of its effective date. If the Legislature fails to appropriate the necessary funds, local governments would have the option of continuing to perform the service and eventually receiving reimbursement, or suspending it until the Legislature provides funding.

Interim Measures

The proposed initiative will not be on the ballot until November 4, 2004. In the meantime, the Governor and the Legislature are likely to take actions that affect local revenues or State imposed mandates when they once again try to balance the State budget in the upcoming legislative session. To protect against any "interim measures" that adversely impact local governments, the proposal provides that any legislation that

is approved during the period between October 1, 2003 and November 4, 2004, *that would have required voter approval had this amendment been in effect*, will be suspended until it is approved by a majority of the electorate at the next general election in 2006.

Arguments For and Against the Proposed Amendment

Advocates for the constitutional amendment argue that it is important to assure adequate and stable local revenues so that the functions and services of local government that people care about and need, especially public safety, will continue to be provided unless the voters decide otherwise. In the past, when the State has had to deal with a major budget crisis, local property taxes were taken to help balance the State's budget. Today, proposals to reduce or eliminate the VLF have again put local revenues at risk.

A proposal to swap local property and sales taxes to finance State borrowing was approved by the Legislature last year to help balance the State budget. Similar but more drastic proposals have been advanced in recent years as a way to reform local finance and land use decisions. The proposed amendment would assure local government's meaningful participation in such decisions in the future.

Finally, advocates claim that the State has played fast and loose with the current mandate reimbursement provisions of the State Constitution, refusing to appropriate funds until years after the State's obligation was established and more recently deferring over \$1 billion of local government mandate payments over the past two years without telling local governments when they will be repaid.

Because the proposed amendment has not been widely circulated or submitted to the State, little opposition has surfaced. However, opponents are likely to argue that this is another case of budgeting by constitutional amendment, such as the existing Proposition 98 for education, or the recently defeated Proposition 53 for infrastructure. As such, the amendment would restrict the Governor and the Legislature's ability to set priorities based upon available revenues and changing needs. Moreover, it would severely limit the ability of the Governor and the Legislature to deal with the current State budget deficit and is likely to be opposed by them.

Whereas similar instances of budgeting by constitution provide for a safety valve in the event of a serious State budget crisis, such as allowing two-thirds of the Legislature to suspend Prop 98 or making Prop 53's transfers to the infrastructure fund contingent on a State budget that can afford them, this proposal places local revenues beyond the reach of the Legislature unless a majority of the electorate subsequently approves of their action at the next statewide election. While local governments would be guaranteed at least a temporary reprieve, the State would not realize the savings during the waiting period which could take months, or over a year, further complicating State budgeting.

Finally, it is not clear how the "interim measures" provision would impact various VLF reduction alternatives under consideration. Depending upon how a VLF reduction is implemented, approval of the initiative could suspend the action if the reduction also reduced local government revenue. Further analysis will be required after the Governor makes a concrete proposal.

Status

The League of Cities, at its annual conference in September, unanimously endorsed the proposed amendment and directed staff to work with CSAC, attorneys, and political consultants to refine the language so that the measure could be submitted to the Attorney General. The CSAC Executive Committee, at its meeting earlier this month, agreed to support the proposal in concept, and proceed to the title and summary stage. A proposal to proceed further and perhaps commit funds will be considered by the Executive Committee at the CSAC Annual meeting in mid-November. Political consultants advising CSAC and the League have indicated that a successful campaign would cost around \$10 million, of which county elected officials would be expected to raise or contribute approximately \$3.5 million.

We will continue to keep you advised.

DEJ:GK
MAL:JR:ib

Attachment

c: Executive Officer, Board of Supervisors
 County Counsel
 Local 660
 All Department Heads
 Legislative Strategist
 Coalition of County Unions
 California Contract Cities Association
 Independent Cities Association
 League of California Cities

THE LOCAL TAXPAYERS AND PUBLIC SAFETY PROTECTION ACT

SECTION ONE. Short Title.

These amendments to the California Constitution shall be known and may be cited as the LOCAL TAXPAYERS AND PUBLIC SAFETY PROTECTION ACT.

SECTION TWO. Findings and Purposes

(a) The People of the State of California find that restoring local control over local tax dollars is vital to insure that local tax dollars are used to provide critical local services including police, fire, emergency and trauma care, public health, libraries, criminal justice, and road and street maintenance. Reliable funding for these services is essential for the security, well-being and quality of life of all Californians.

(b) For many years, the Legislature has taken away local tax dollars used by local governments so that the State could control those local tax dollars. In fact, the Legislature has been taking away billions of local tax dollars each year, forcing local governments to either raise local fees or taxes to maintain services, or cut back on critically needed local services.

(c) The Legislature's diversion of local tax dollars from local governments harms local governments' ability to provide such specific services as police, fire, emergency and trauma care, public health, libraries, criminal justice, and road and street maintenance.

(d) In recognition of the harm caused by diversion of local tax dollars and the importance placed on voter control of major decisions concerning government finance, and consistent with existing provisions of the California Constitution that give the people the right to vote on fiscal changes, the People of the State of California want the right to vote upon actions by the State government that take local tax dollars from local governments.

(e) The Local Taxpayers and Public Safety Protection Act is designed to insure that the People of the State of California shall have the right to approve or reject the actions of state government to take away local revenues that fund vitally needed local services.

(f) The Local Taxpayers and Public Safety Protection Act strengthens the requirement that if the State mandates local governments to implement new or expanded programs, then the State shall reimburse local governments for the cost of those programs.

(g) The Local Taxpayers and Public Safety Protection Act does not amend or modify the School Funding Initiative, Proposition 98 (Article XVI, section 8 of the California Constitution).

(h) Therefore, the People declare that the purposes of this Act are to:

- (1) require voter approval before the Legislature removes local tax dollars from the control of Local Government, as described in this measure;
- (2) insure that local tax dollars are dedicated to local governments to fund local public services;
- (3) insure that the Legislature reimburses local governments when the State mandates local governments to assume more financial responsibility for new or existing programs; and
- (4) prohibit the Legislature from deferring or delaying annual reimbursement to local governments for state-mandated programs.

SECTION THREE. Article XIII E is hereby added to the California Constitution to read as follows:

ARTICLE XIII E Local Taxpayers and Public Safety Protection Act

Section 1. State-wide Voter Approval Required.

(a) Approval by a majority vote of the electorate, as provided for in this section, shall be required before any act of the Legislature takes effect that removes the following funding sources, or portions thereof, from the control of any Local Government as follows:

- (i) Reduces, or suspends or delays the receipt of, any Local Government's proportionate share of the Local Property Tax when the Legislature exercises its power to apportion the Local Property Tax; or requires any Local Government to remit Local Property Taxes to the State, a state-created fund, or, without the consent of the affected Local Governments, to another Local Government;
- (ii) Reduces, or delays or suspends the receipt of, the Local Government Base Year Fund to any Local Government, without appropriating funds to offset the reduction, delay or suspension in an equal amount;
- (iii) Restricts the authority to impose, or changes the method of distributing, the Local Sales Tax;
- (iv) Reduces, or suspends or delays the receipt of, the 2003 Local Government Payment Deferral; or
- (v) Fails to reinstate the suspended Bradley-Burns Uniform Sales Tax Rate in accordance with Section 97.68 of the Revenue and Taxation Code added by Chapter 162 of 2003 Statutes; or reduces any Local Government's allocation of the Property Tax required by Section 97.68 while the Sales Tax Rate is suspended.

(b) A vote of the electorate, as provided in this section, shall also be required if an act of the Legislature that establishes classifications or exemptions from the Local Property Tax or the Local Sales Tax does not include a continuous appropriation to reimburse Local Governments for the actual loss of revenue from those classifications or exemptions.

(c) Prior to its submission to the electorate, an act subject to voter approval under this section must be approved by the same vote of the Legislature as is required to enact a budget bill and shall not take effect until approved by a majority of those voting on the measure at the next statewide election in accordance with subdivision (d).

(d) When an election is required by this section, the Secretary of State shall present the following question to the electorate: "Shall that action taken by the Legislature in [Chapter___ of the Statutes of ___], which affects local revenues, be approved?"

Section 2. Definitions

(a) "Local Government" means any city, county, city and county, or special district.

(b) "Local Government Base Year Fund" means the amount of revenue appropriated in the 2002-2003 fiscal year in accordance with Chapters 1 through 5, commencing with section 10701 of Part 5 of Division 2 of the Revenue and Taxation Code in effect on August 9, 2003, adjusted annually based upon the change in assessed valuation of vehicles that are subject to those provisions of law. In the event that the fees imposed by those provisions of law are repealed, then the Fund shall be adjusted annually on July 1 by an amount equal to the percentage change in per capita personal income and the change in population, as determined pursuant to Article XIIB.

(c) "2003 Local Government Payment Deferral" means the amount of revenues required to be transferred to Local Government from the General Fund specified in paragraph D of subdivision 3 of subsection (a) of section 10754 of the Revenue and Taxation Code as it read on August 9, 2003.

(d) "Local Property Tax" means any Local Government's January 1, 2003 proportionate share of ad valorem taxes on real property and tangible personal property apportioned pursuant to the Legislature's exercise of its power to apportion property taxes as specified in Article XIII A, section 1. "Local Property Tax" also means any Local Government's allocation of the ad valorem tax on real property and tangible personal property pursuant to Article XVI, section 16.

(e) "Local Sales Tax" means any sales and use tax imposed by any city, county, or city and county pursuant to the Bradley-Burns Uniform Sales and Use Tax (Chapter 1 of Part 1.5 of Division 2 of the Revenue and Taxation Code) in accordance with the law in effect on January 1, 2003.

(f) "Special District" means an agency of the State, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions with limited geographic boundaries, including redevelopment agencies, but not including school districts, community college districts, or county offices of education.

(g) "State" means the State of California.

Section 3. Interim Measures

(a) The operation and effect of any statute enacted between November 1, 2003 and the effective date of this Act, that would have required voter approval pursuant to Section 1 if enacted on or after the effective date of this Act (the "Interim Statute"), shall be suspended on that date and shall have no further force and effect until the date the Interim Statute is approved by the voters at the first statewide election following the effective date of this Act in the manner specified in Section 1. If the Interim Statute is not approved by the voters, it shall have no further force and effect.

(b) If the Interim Statute is approved by the voters, it shall nonetheless have no further force and effect during the period of suspension; provided, however, that the statute shall have force and effect during the period of suspension if the Interim Statute or separate act of the Legislature appropriates funds to affected local governments in an amount which is not less than the revenues affected by the Interim Statute.

SECTION FOUR. Article XIIB Section Six (6) is hereby amended as follows:

SEC. 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall annually provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

- (a) (i) Legislative mandates requested by the local agency affected;
- (b) (ii) Legislation defining a new crime or changing an existing definition of a crime; or
- (c) (iii) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(b) The annual subvention of funds required by this section shall be transmitted to the local government within 180 days of the effective date of the statute or regulation or order by a State officer or agency that mandates a new program or higher level of service, or within 180 days of a final adjudication that a subvention of funds is required pursuant to this section. For purposes of this section, the Legislature or any State agency or officer mandates a new program or higher level of service when it creates a new program, requires services not previously required to be provided, increases the

frequency or duration of required services, increases the number of persons eligible for services, or transfers to local government complete or partial financial responsibility for a program for which the State previously had complete or partial financial responsibility.

(c) If during the fiscal year in which a claim for reimbursement is filed for a subvention of funds, the Legislature does not appropriate a subvention of funds that provides full reimbursement as required by subdivision (a), or does not appropriate a subvention of funds that provides full reimbursement as part of the state budget act in the fiscal year immediately following the filing of that claim for reimbursement, then a local government may elect one of the following options:

(i) Continue to perform the mandate. The local government shall receive reimbursement for its costs to perform the mandate through a subsequent appropriation and subvention of funds; or

(ii) Suspend performance of the mandate during all or a portion of the fiscal year in which the election permitted by this subdivision is made. The local government may continue to suspend performance of the mandate during all or a portion of subsequent fiscal years until the fiscal year in which the Legislature appropriates the subvention of funds to provide full reimbursement as required by subdivision (a). A local government shall receive reimbursement for its costs for that portion of the fiscal year during which it performed the mandate through a subsequent appropriation and subvention of funds.

The terms of this subdivision do not apply, and a local government may not make the election provided for in this subdivision, for a mandate in effect on January 1, 2004 that either requires safe working conditions for local government employees or establishes procedural rights arising from and directly relating to local government employment.

(d) For purposes of this section, "mandate" means a statute, or action or order of any state agency, which has been determined by the Legislature, any court, or the Commission on State Mandates or its designated successor, to require reimbursement pursuant to this section.

SECTION FIVE. Construction.

(a) This measure shall be liberally construed to effectuate its purposes, including providing adequate funds to Local Government to fund local services such as police, fire, emergency and trauma care, public health, libraries, criminal justice, and road and street maintenance.

(b) This measure shall not be construed either to alter the apportionment of the ad valorem tax on real property pursuant to Section 1 of Article XIII A by any statute in effect prior to January 1, 2003 or to prevent the Legislature from altering that apportionment in compliance with the terms of this measure.

(c) Except as provided in Section 3 of Article XIII E added by Section Three of this Act, the provisions of Section 1 of Article XIII E added by Section Three of this Act apply to all statutes adopted on or after the effective date of this Act.

SECTION SIX. If any part of this measure or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications that reasonably can be given effect without the invalid provision or application.